IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3073 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT UNIVERSITY

Versus

GUJARAT UNIVERSITY GENERAL EMPLOYEES UNION

Appearance:

1. Special Civil Application No. 3073 of 1993

MR SN SHELAT, SR. COUNSEL with MR HARSHADRAY A DAVE for Petitioner No. 1.

MR KV GADHIA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 17/04/2004

ORAL JUDGEMENT

1. The petitioner - Gujarat University has

filed this petition under Article 227 of the Constitution of India challenging the judgment and award made by the Industrial Tribunal, Gujarat at Ahmedabad in Reference (IT) No. 4 of 1988 dated 15th January, 1993. By the said award the petitioner has been directed that it should continue to pay to the employees of Shramik Vidhya Kendra or Shramik Vidyapeeth the pay-scales which are on par with the employees of the petitioner together with all the incidental monetary benefits which have been paid to the said employees, on permanent basis, as was being done in the case of the employees of the petitioner. It has been further directed that it should prepare a final seniority list department-wise in relation to the employees of the petitioner and of the Shramik Vidyapeeth. It has also been directed that the petitioner should pay the examination allowances which were being paid to its employees with effect from 25th April, 1986 to the employees of the Polyvalent Adult Education Centre with effect from 25th April, 1986. It has been further directed that it should redesignate the employees in accordance with the change of designations made in the case of employees of the petitioner. Lastly it has directed that the petitioner should make available all the permanent benefits which were being paid to its employees to the employees of the Polyvalent Centre and the said benefits should be paid to them within 30 days of the publication of the award.

2.0. To appreciate the controversy in the petition several facts which are concerning the creation of the petitioner and its constitution providing for its set up, administration, source of funds etc., are needed to be stated and they are as under :-

2.1. The Government of India evolved a project involving programme of adult education for workers in urban and industrial areas. It was meant for educating the workers, men and women, in organized sectors, who were illiterate or semi-literate, unskilled or semi-skilled, often in a state of poor transition from rural and tribal to urban and industrial life settings and ill-equipped to tackle the problems of life and work. In the 4th Five Year Plan a scheme for Shramik Vidyapeeth (Polyvalent Adult Education Centre) was instituted and it was continued even in the 5th Fine Year Plan with the approval of the Planning Commission. As a part of the said programme the Government of India desired to have one such institution at Ahmedabad and, therefore, appropriate presidential approval was sought. On receipt of the same, adequate steps were taken to establish the Shramik Vidyapeeth at Ahmedabad with the aid of

University of Gujarat through its Department of Labour Welfare/Centre for Social Systems. Ministry of Education and Social Welfare, Department of Education, Government of India vide its letter dated 27th January, 1976 addressed to the Accountant General, Central Revenue, New Delhi apprised the Accountant General with all the details of the setting up of the Shramik Vidyapeeth at Ahmedabad with immediate effect. The petitioner has annexed copy of the said letter at Annexure-A. Perusal of the said letter shows various features of the Shramik Vidyapeeth then to be established at Ahmedabad. It was established with the following aims and objectives :-

i) To enrich the lives of workers through knowledge and better understanding of their environments.
ii) To prepare them more adequately for vocational and technical training through general education.
iii) To improve the occupational skill and technical knowledge of workers for raising their efficiency and increasing productive ability,
iv) To develop the sight perspective in towards work.

It also prescribed the staffing pattern for the Vidyapeeth. So far the pay-scales to be granted to the employees of the Vidyapeeth was concerned, it was prescribed that the University could bring them down to the level of the corresponding posts under the State Government, but not in any case increase to the University pattern or any other pattern. The allowances which were made admissible to the employees of the State of Gujarat were made applicable to the staff of the Vidyapeeth. It was also decided to have the establishment of the Vidyapeeth in the premises of the petitioner for the time being. The petitioner was also directed that though it could invite dignitary or delegate to any conference, seminar or meeting, but for that it should obtain prior permission of the Government of India well in advance. It also appears from the said letter that entire financial burden to meet the expenditure for establishment and continuance of the Vidyapeeth was to be borne by the Central Government. The petitioner was further directed that whatever the assets that were created as a result of grant from the Government of India could not be disposed of, encumbered or utilized for the purposes other than those for which the assets have been sanctioned without obtaining the prior approval of the Government of India. In case of

cessation of the grant, these properties were to be reverted to the Government of India.

2.2. The Government of India through its Department of Education thought it fit to have a review done of the situation and appointed a Review Committee in the month of August 1976. The said Committee after reviewing the scheme of Workers Social Education Institutes vis-a-vis the scheme of Polyvalent Adult Education Centres (Shramik Vidyapeeths) passed a resolution dated June 6, 1978. Copy of the said resolution has been annexed as part of Annexure-A. In clause I thereof the objectives of the programme of education of workers have been set out. Further after reviewing the aforesaid schemes the committee thought it fit to merge both the existing scheme, namely Workers Social Education Institutes and Polyvalent Adult Education Centre and they were integrated into one scheme which was ultimately converted into Shramik Vidyapeeth. The Committee also decided to restructure certain existing Shramik Vidyapeeths which were already functioning at Bombay, Delhi, Ahmedabad and the Workers' Social Education Institutes at Nagpur and Indore and they were to be reorganized in the line of the recommendations of the said Committee. In clause V of the resolution it was recommended that the Shramik Vidyapeeth will be set up as autonomous body under voluntary, statutory or other such organization. In clause VI thereof it was stated that the affairs of each Shramik Vidyapeeth will be managed by a Board of Management with a distinguished person as its Chairman. Those Boards will also give adequate representation to the various interests including the Government of India and the State Governments. In clause VIII it was suggested that in setting up of the network of Shramik Vidyapeeth, phased out efforts should be made to extend and explain the programmes and for that the willingness to cooperate by the State Government or the organizations concerned (such as the present petitioner) was kept in view. In clause XII thereof, it was recommended that they provide technical guidance to the Vidyapeeths and to coordinate their activities, to organize training and orientation for different functionaries and to provide guidance in the programme development, curriculum formulation and production of materials and multimedia aids. The unit to be set up in the Directorate of Adult Education. The said unit would also work as liaise at all India level with various agencies including State Governments and it would undertake to review and evaluation of the programme from time to time.

2.3. In light of the aforesaid recommendations, the guidance for planning and organization of Shramik Vidyapeeth was introduced by Ministry of Education and Culture, Government of India in the year 1980. It dealt with a programme of adult education for workers in urban and industrial areas. As stated above, the programme was evolved keeping in focus the plight of the men and women who were migrating from rural areas to the urban for employment and who had no means to tackle the problems or urban life and work. It was introduced to improve their lives, decrease their dependency and increase their work efficiency and to sharpen their capabilities for adaptation to social, economic and technological changes. In accordance with the recommendations for establishment of a separate unit under the Directorate of Adult Education, establishment of separate unit was prescribed. The guidelines also provided for organization and management. In view of the fact that the programme was to be done with flexibility and mechanism in various aspects such as management, expenditure, administration, etc. and therefore, it was suggested that the Shramik Vidyapeeth should be set up as an autonomous organization. It was, therefore, prescribed that it was to be created as autonomous organization and its affairs should be managed by a management board. In the guidelines it was also provided that the Vidyapeeth could be registered as a society under the Societies Registration Act, 1860 having its own rules and regulations. The petitioner has annexed complete copy of the booklet titled as 'guidelines for planning and organization of Shramik Vidyapeeth' and in the said booklet the form of registration as well as the suggested draft of the memorandum of association as well as the rules and regulations have been annexed.

2.4. As stated above, the Vidyapeeth was established in the city of Ahmedabad in the premises of the Gujarat University i.e. the petitioner and the Government of India then had sanctioned the grant of sum of Rs.1 lac to the petitioner.

2.5. In accordance with the guidelines the management board has been constituted and in accordance with the staffing pattern prescribed by the Government of India the teaching as well as administrative staff has been employed and prescribed its pay-scales. Keeping all these facts in view, I will have to decide the dispute between the parties.

2.6. It appears from the record of the petition that subsequently the employees of the Shramik

Vidyapeeth raised several demands, namely that they should be made available all the benefits which are being paid to the permanent employees of the petitioner. Secondly that their seniority should be decided from the date of joining the service of the Shramik Vidyapeeth and it should be decides vis-a-vis the seniority of the employees of the petitioner. The third demand is that they should also be paid examination allowances as being paid in the case of employees of the petitioner University with effect from 1st April, 1981. The fourth demand is that their designation should also be changed as being done in the cases of the employees of the petitioner and the fifth demand is that they should also be extended all the benefits which have been granted to the permanent employees of the petitioner, including to grant them appointments on permanent basis. Since the demands were not accepted by the petitioner, industrial dispute was raised which ultimately was referred to the Industrial Tribunal u/S. 10 of the Industrial Disputes Act vide order dated 2nd January, 1988 of the Section Officer, Labour and Employment Department, Government of Gujarat, Gandhinagar.

2.7. The respondent filed statement of claim making detailed averments in support of their demands. The gist of the same was that the Shramik Vidyapeeth was part and parcel of the petitioner. It has direct supervision, control and administration of the petitioner University and, therefore, they were also the employees of the petitioner. According to them, the appointments to different posts in the Shramik Vidyapeeth were being made by issuing advertisement in the name of the Registrar of the petitioner and upon selection of the successful candidates, the appointments have been given also under the signature of the Registrar of the petitioner. It is further averred that the interchangeable postings were given in Ahmedabad. According to the respondents, employees of the Shramik Vidyapeeth were being transferred to the posts on the regular establishment of the petitioner and vice-versa. In view of the aforesaid factors, the respondents claimed that they should be treated as the employees of the petitioner and they should be extended all the benefits that were being paid to the employees of the petitioner.

2.8. The claim of the respondents was resisted by the petitioner by filing written statement at Exh. 9. In the said statement various contentions have been raised which have been in detail reproduced by the Tribunal in its judgment. Hence, they are not repeated here. However, the gist of the defence of the petitioner

is that the demands of the respondents cannot be accepted because Shramik Vidyapeeth is an autonomous body and it has got nothing to do with the petitioner except that the petitioner's cooperation is being sought for running the same. It has also been contended by the petitioner that merely because some orders regarding appointments are issued in the name of the Registrar of the petitioner and that there are instances of interchangeable transfers, these factors solely cannot be determining factors for holding that Shramik Vidyapeeth is part and parcel of the petitioner. In view of the contentions raised in the written statement, it was prayed that the reference be dismissed.

2.9. Before the Tribunal, both the parties led oral as well as documentary evidence to substantiate their respective cases. The Tribunal after appreciating the material placed before it, came to the conclusion that since the Shramik Vidyapeeth was directly under the administration, supervision and control of the petitioner, the demands of the respondent by and large were required to be granted. Hence, vide award dated 15th January, 1993 it has given the aforesaid directions. It is this award which is now challenged by the petitioner in this petition.

3. Mr. S.N. Shelat, learned Advocate General appearing for the petitioner has submitted that the approach of the Tribunal is absolutely erroneous. According to him, the petitioner is not the parent body of Shramik Vidyapeeth because Shramik Vidyapeeth has been created as an autonomous body having its own board of management. He has further submitted that the necessary finance for running the Vidyapeeth is being provided for by the Government of India. According to Mr. Shelat, though the board of management comprises, amongst others, some important officers of the University, it cannot be said that the Vidyapeeth is affiliated to the petitioner. In support of his contentions, he has cited several authorities to which I will refer in due course of the judgment.

3.1. As against that, Mr. K.V. Gadhia, learned advocate appearing for the respondents has submitted that the material produced on record in the form of oral evidence of both the parties as well as the documentary evidence, it is very clear that there is a direct supervision and administration of the petitioner in running the Vidyapeeth. Further the petitioner exercises full control in the management of the affairs of the Vidyapeeth and, therefore, Vidyapeeth is part and

parcel of the petitioner. He has further submitted that there are number of instances where the employees of the Vidyapeeth have been transferred to the posts on the regular establishment of the petitioner and unless Vidyapeeth was not affiliated to the petitioner, such transfers could not have been made. He has placed reliance on the decision rendered by the Kerala High Court in the case of Eddy Current Controls (India) Ltd. v. Regional P.F. Commissioner reported in 1993 L.L.R. page 961 to substantiate his submissions. He has, lastly, submitted that there is no merit in this petition and the judgment and award made by the Tribunal are just and proper requiring no interference by this Court.

4. Having gone through the entire material of the petition, it clearly appears that the creation of Shramik Vidyapeeth was as result of a scheme that was evolved some time in the late sixties during the 4th Five Year Plan. It was meant for educating the men and women who were in the state of transit from rural to urban places in the hunt for employment. Their plight had become miserable because they were not accustomed to the pattern of urban life and in such situation they were being exploited. In pursuance to such scheme several institutions in the form of the Shramik Vidyapeeth or the Workers' Social Education Institutes were established in the cities like Bombay, Delhi, Calcutta, Indore and Nagpur. The establishment of such institutions had taken place in or around the year 1976. Since then Shramik Vidyapeeth at Ahmedabad is educating the adult illiterate and unskilled persons.

4.1. The question that is now required to be decided is whether the criteria followed by the Tribunal in light of the evidence that was produced before it to hold that the respondents were the employees of the petitioner are just and proper.

4.2. What is the status of the Shramik Vidyapeeth has been adequately spelt out from the aforesaid letter of the Education Department dated 27th January, 1976 and also the guidelines for planning and organization of Shramik Vidyapeeth. Considering the provisions that have been enumerated in the aforesaid documents, there is no doubt in my mind that the Shramik Vidyapeeth has been created as an autonomous body. As stated above, the complete staffing pattern of the Vidyapeeth has been set up by the Government of India and the pay-scales of the various employees who may be appointed under the prescribed staffing pattern alongwith the Vidyapeeth, have also been fixed by the Central

Government. Since the scheme has been evolved during the 4th and 5th Five Year Plans the entire financial burden to establish such Vidyapeeth at different places has been borne by the Government of India. It is true that so far the pay-scales are concerned, certain discretions have been given in favour of the governing body, but ultimately the finance is being provided and controlled by the Government of India. Not only that but even the way in which the finance is to be utilized by the petitioner that has been prescribed in detail by the Central Government. It has gone to the extent of saying that whatever the assets that may be created from the grant, in the event the grant ceased to exist would revert back to the Government of India. It may also be worthwhile to note that so far the setting of Shramik Vidyapeeth at Ahmedabad is concerned, it was decided to set it up in the premises of the Gujarat University only for the time being; meaning thereby it was to have its own separate establishment elsewhere later on. Some of the provisions referred to by me in the foregoing paras. have been prescribed in the guidelines for planning and organization of Shramik Vidyapeeth. As stated above, it provides for organization and management of the Shramik Vidyapeeth, under which management board is required to be constituted. The management board is required to be constituted as under :-

"1. Chairman :
Vice-Chairman or the Chairman in the case where Shramik Vidyapeeth is established under the auspices of an university or a voluntary agency. Where it is set up by the State Government it could be a distinguished educationist or a senior official of the State Government including retired civil servant.

2. Tow members representing interests of workers.
3. A member representing the interests of employers
4. Two social workers
5. One senior most officer of the State Government representing the Department under which the Shramik Vidyapeeth is established and stationed at the place of location of the Vidyapeeth.
6. One senior most officer of Labour Department stationed at the place where the Shramik Vidyapeeth is located.
7. Two nominees of the Government of India.
8. Director of Shramik Vidyapeeth -

Member-Secretary."

In the said provisions it is further provided that in case of appointment or selection of a senior officer from the staff, representative of the Government of India was required to be included invariably. Further as stated above, the flexibility and appropriate mechanism was required to be evolved to take quick decisions in relation to different issues such as finance and other such important issues. For that purpose not only granting of status of autonomous body to the Shramik Vidyapeeth was prescribed but even the Director of the Shramik Vidyapeeth was required to be invested with adequate autonomy and powers to enable him to take quick decision in day-to-day working of the Vidyapeeth. It may also be noted here that initially so far the pay-scales of staff of the Vidyapeeth is concerned, the Government of India had suggested some pay-scale which was in accordance with the pay-scale of the Government of India. However, the petitioner was given certain discretion so as to bring it on par with the employees of the State Government. At the same time, it was made very clear to it that it could not in any circumstances raise it to the level of the pay-scales meant for the employees of the petitioner University. It was at a very late stage discretion was given to bring it on par with the employees of the petitioner University as can be seen from letter dated 10th March, 1983. When these are the salient features of the constitution of the Shramik Vidyapeeth and its administration, it is difficult to hold that it is not an autonomous body and it is completely dependent on the management of the petitioner University. Merely because some orders regarding appointment have been issued pursuant to the advertisement given by the petitioner under the signatures of the Registrar of the petitioner and in the appointment letters it has been stated that they will have to work in accordance with the rules and regulations of the petitioner University would not mean that they are employees of the petitioner. Further even the fact that on some occasions interchangeable transfers have been made, would also not help the respondents to establish that the Vidyapeeth is part and parcel of the petitioner. When the Vidyapeeth has been created for the definite purpose by the Government of India and that too at difference places with aforesaid objectives and when it has been categorically stated that it should be given the status of an autonomous body to confer flexibility and appropriate mechanism to tackle various problems quickly. It now cannot be tagged on with the petitioner as if it was like any other education department of the

petitioner. The constitution of the Shramik Vidyapeeth merely shows that it is a distinct, different and separate entity which has its own independent existence dehors the petitioner. It has its own board of management and the rules governing its administration and the staffing pattern prescribed by the Government of India. When these glaring features are there, the Tribunal appears to have been swayed away by the facts that the appointments were made under the signatures of the Registrar, there were interchangeable transfers and in the letters of appointment it was stated that employees will have to work in accordance with the rules and regulations of the petitioner. When the constitution of the Vidyapeeth in the form of guidelines for planning and organization of Shramik Vidyapeeth has been formulated by the Ministry of Education and Culture, Government of India, which provides for its autonomous status, there was no justification for the Tribunal to hold that the employees of Shramik Vidyapeeth were required to be given all the benefits that were available to the employees of the petitioner. The respondents i.e. employees of the Shramik Vidyapeeth could be granted benefits which have been duly prescribed by the Finance Department of the Government of India. It may be noted here that it is the Accountant General of India who has been given authority to examine the record of expenditure in relation to the Vidyapeeth and he has been given discretion to do it as and when he desired to examine them. In that view of the matter, there is no justifiable reason for the Tribunal to come to the conclusion that the respondents deserve to be treated as the employees of the petitioner.

4.3. At this juncture it would be worthwhile to refer to the decision cited by Mr. Gadhia, learned advocate for the respondents. In the decision rendered by the Division Bench of Kerala High Court in the case of Eddy Current Controls (India) Ltd. (supra), the Kerala High Court has spelt out several features to test whether a particular unit was namely, Visakha Cement Works was branch of the petitioner company i.e. Eddy Current Controls (India) Ltd. However, before prescribing the factors it has also sounded a word of caution that there cannot be a strait-jacket formula and each case will depend on the facts of that case. However, it has broadly prescribed the following features :-

(1) The unity of ownership, management and control, unity of employment and conditions of service, functional integrality and general unity of purpose.

(2) The connection between the two activities is not by itself sufficient to justify an answer one way or the other, but the employer's own conduct in mixing up or not mixing up the capital, staff and management may often provide a certain answer.

(3) The real purpose of the tests is to find out the true relationship between the two parts, branches, units, etc. If they constitute one integrated whole, we say that the establishment is one. If it is to the contrary, then each unit is a separate one.

(4) In one case the unity of ownership, management and control may be the important test; in another case functional integrality or general unity may be the important test; and in still another case the important test may be the unity of employment.

(5) Many enterprises may have functional integrality between factories which are separately owned; some may be integrated part with units or factories having the same ownership and in part with factories or plants which are independently owned. In the midst of all these complexities, it may be difficult to discover the real thread of unity."

It may be noted here that aforesaid features also to a considerable extent help the petitioner. So far the ownership is concerned, there is no doubt that the Shramik Vidyapeeth has been established by the Government of India. It has provided the petitioner with necessary finance as can be seen from the record of this petition. Not only that but the regular grant is being paid to it to meet day-to-say expenses including the salary of the staff. The Government of India has also given general direction that in case grant is discontinued, whatever the assets that have been created from the grant paid by the Government should revert back to the Government of India. So far the management is concerned, may be that some of the responsible officers of the petitioner are included in the management board, but the board is constituted as per the provisions of the aforesaid guidelines prescribed by the Government, which has its independent existence. The Director, Chairman, etc. have been invested with autonomous powers and wide

discretion. Further the conditions of service have also been prescribed by the Government of India. So far the other factors enumerated by the Kerala High Court are concerned, they are not existing in the present case. This decision cannot help Mr. Gadhia.

4.4. As against that, Mr. Shelat has placed reliance on the decision of the Apex Court rendered in the case of Andhra University v. M. Shivaram reported in AIR 1994 S.C. p.1668, in which on the facts of that case, the Apex Court agreed with the decision of the learned Single Judge holding that INCOR was not a wing of Andhra University. The Apex Court has reproduced the part of the judgment of the learned Single Judge of Andhra Pradesh High Court with approval, which in the present case helps the petitioner and, therefore, it is also reproduced here.

> "To my mind it will be neither just nor proper to draw an inference for the aforesaid material that INCOR was a wing of the University. Here so when the petitioners have not filed their appointment letters and their recruitment was not made as contemplated by the statutory provisions of the University. The Syndicate had indicated that it was not accepting any financial liability while approving this. Apparently the petitioners were aware that they were recruited by it otherwise they would have protested the time of their being appointed as employees of INCOR. ...."

4.5. The learned Single Judge of the Andhra Pradesh High Court ultimately directed a scheme to be evolved as INCOR has by then ceased to exist to employ as a measure of grace the unemployed employees of the INCOR in the University. The scheme was also approved by the Apex Court. Similarly in the case of Jawaharlal Nehru Technological University v. Smt. T. Sumalatha reported in JT 2003 (6) S.C. p.507 wherein it has been held as under :-

> "The terms and features of the scheme unmistakably indicates that the university - a centre of excellence chosen by the Ministry of Education, acts for and on behalf of government of India and the nodal centre is nothing but the reflection of Central Government acting through the media of university. The entire funding is done by the Central government and the nodal centre functions under the overall supervision and guidance of the lead centre attached to the

> Ministry of Education. Even the details of expenditure including the payments to be made to the staff of various categories are spelt out in the scheme as well as in the orders releasing the annual grants. There is, therefore, an obvious fallacy in the reasoning of the High Court that the 'institute' (nodal centre) acts as an agency of the State government. The State government does not come into the picture at all."

If the facts of the present case are compared with the facts of this decision, it will clearly show that this decision will apply to this case with all force. In the present case also the terms and features of the scheme unmistakably indicate that the petitioner was chosen by the Ministry of Education to act on its behalf i.e. Government of India and it was nothing but an institution of the Central Government acting through the media of university. If that be so, the decision of the Tribunal can be termed as erroneous.

4.6. Lastly, in a decision rendered in the case of Purna Chandra Nanda v. State of Orissa reported in JT 1996 (5) S.C. p.458 the Apex Court has categorically held that because of the interchangeable posts the concerned employee does not automatic become entitled to the holder of the post and for the same scale of pay. Thus the factor regarding interchangeable transfer and appointments made under the signature of Registrar of the petitioner will not have any bearing to holding that the Shramik Vidyapeeth was a limb of the petitioner university.

5. In view of the aforesaid, the judgment and award of the Tribunal, as stated above, is quashed and set aside. This petition is allowed. Rule made absolute with no order as to costs.

[AKSHAY H. MEHTA, J.]

* Pansala.